

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM BOSHEARS, et al,

Plaintiffs,

v.

KITSAP COUNTY, et al,

Defendants.

CASE NO. C16-6012RBL

ORDER DENYING DEFENDANTS
BOYER'S AND NEWLIN'S MOTION
TO DISMISS

DKT. #50

THIS MATTER is before the Court on Defendants Steve Boyer's and Ned Newlin's Motion to Dismiss [Dkt. #50] Plaintiffs Christina Boshears', her Estate's, and surviving family members' claims against them under Federal Civil Rule 12(b)(6). Boshears died while in custody at the Kitsap County Jail. At the time, Boyer was the Sheriff of Kitsap County and Newlin was the Chief of the Kitsap County Correctional facility. Boshears alleges a 42 U.S.C. § 1983 denial of prisoner medical care claim against them.

I. DISCUSSION

In their Amended Complaint [Dkt. #11], Plaintiffs allege Boyer and Newlin were the final policymakers of the Kitsap County Sheriff Office Jail (KCSOJ), where practices, policies, and customs demonstrated "deliberate indifference" to inmates' constitutional right to receive

1 necessary healthcare for “serious medical needs,” such as when “the failure to treat a prisoner’s
2 condition could result in further significant injury”—in this case death—or could cause
3 “unnecessary and wanton infliction of pain.” *See Estella v. Gamble*, 429 U.S. 97, 104, 97 S. Ct.
4 285, 50 L.Ed.2d 251 (1976). They allege that as the final policymakers, Boyer and Newlin were
5 ultimately responsible for the operation, and actual practices, of KCSOJ. They also allege Boyer
6 and Newlin failed to assure KCSOJ met minimum federal standards, and instead promulgated
7 policies and practices that prioritized aggressively cutting and containing costs over redressing
8 inmates’ serious medical needs. This “unwritten” prioritization is allegedly evidenced by the
9 Jail’s allowing licensed practical nurses to assess inmates’ health, which Plaintiffs claim exceeds
10 the training and licensure of LPNs, and by discouraging transfers of inmates to hospitals, even
11 when necessary for treatment of serious, life-threatening medical conditions.

12 Upon a motion to dismiss under Federal Civil Rule 12 (b)(6), the Court limits its review
13 to the allegations of material fact set forth in the Complaint, which are taken to be true and
14 viewed in the light most favorable to the non-moving party together with all reasonable
15 inferences therefrom. *See Pierce v. NovaStar Mortg., Inc.*, 422 F.Supp.2d 1230, 1233 (2006)
16 (citing *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998)). Dismissal can be based on both the
17 lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable
18 legal theory. *See Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).
19 Conclusory allegations of law and unwarranted inferences are not sufficient to defeat a motion to
20 dismiss and need not be accepted as true. *Id.*; *see also Holden v. Hagopian*, 978 F.2d 1115, 1121
21 (9th Cir. 1992). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need
22 detailed factual allegations . . . , a plaintiff’s obligations to provide the ‘grounds’ of his
23 ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of the
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1 elements of a cause of action will not do.” *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544,
2 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (quoting *Sanjuan v. American Bd. of Psychiatry*
3 *and Neurology, Inc.*, 40 F.3d, 247, 251 (C.A.7 1940)).

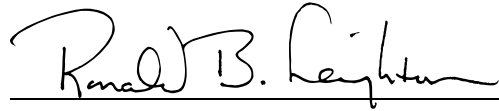
4 Plaintiffs’ Amended Complaint is replete with references to “written” policies requiring
5 KCSOJ staff to monitor and to treat inmates withdrawing from opiate addiction that contradict its
6 “actual” policy of not monitoring for drug withdrawal. It also references to the contract between
7 Defendant Kitsap County and Defendant ConMed (the on-site health services provider), which
8 allegedly articulates customs, practices, and policies prioritizing and incentivizing savings. It
9 also alleges Boyer and Newlin, as signatories to the contract, had to know, or at the least, should
10 have known, the true intent of the KCSOJ’s contract with ConMed: “save money, put safety
11 last.”

12 As a slogan, this allegation might make a catchy bumper sticker, but as the Supreme
13 Court admonishes, a plaintiff’s obligation to provide the “grounds” of their entitlement to relief
14 requires more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
15 555 (2007). On the face of the Complaint, it is evident something went terribly wrong in the jail
16 between December 12, 2013 and December 15, 2013 involving Christina Boshears. Whether it
17 involved the personal participation of Boyer and/or Newlin cannot be gleaned from Plaintiffs’
18 factual assertions, but she has raised a plausible-enough-on-its-face assertion that as contract
19 signatories, they had a role in setting the jail’s unwritten policies, or at least should have known
20 the effect of those policies on inmates in need of serious medical attention. The Court will
21 therefore defer deciding on the claims against Boyer and Newlin until Plaintiffs have had an
22 opportunity on summary judgment to present evidence making more concrete the viability of
23 their claims against these two individuals.

1 **II. CONCLUSION**

2 The Motion to Dismiss [Dkt. #50] is DENIED without prejudice.

3 Dated this 22nd day of June, 2017.

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5 Ronald B. Leighton
6 United States District Judge
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